Filed 2/23/10 Limon v. Reiland CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JOSE ALBERTO LIMON, Plaintiff and Respondent, v. HAROLD P. REILAND, JR., Defendant and Appellant.	A123865 (Contra Costa County Super. Ct. No. CCSC#C06-01764)

Defendant and appellant, Harold P. Reiland, Jr. (defendant), appearing in propria persona, appeals the judgment after a bench trial entered in favor of plaintiff and respondent Jose Alberto Limon (plaintiff) in the amount of $73,000 plus costs of suit on his complaint for monies owed on an oral construction contract. Defendant attacks the judgment on multiple grounds, none of which merit reversal. Accordingly, we affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff filed his second amended complaint on July 20, 2007. In the complaint, plaintiff alleges that at all relevant times he was a California licensed contractor doing business as a land grader and that defendant owned real property in Alamo in Contra Costa County (the property). In support of his first cause of action for breach of contract, plaintiff further alleged that on or about August 15, 2005, defendant hired him pursuant to an oral contract to perform grading work at the property; plaintiff submitted several invoices to defendant for grading services rendered at the property, which defendant paid; and, in the Spring of 2006, defendant stopped paying on plaintiff's invoices. Plaintiff

alleged damages in the amount of $93,157.50 plus interest in the amount of 10 percent from May 2006.[1]

On December 13, 2007, defendant filed an answer to the complaint and a cross-complaint. In his answer, defendant generally denied the allegations of the complaint and asserted thirty-two affirmative defenses. In his cross-complaint, defendant alleges that plaintiff was employed to grade a road and a pad for the construction of a home on the property; defendant provided plaintiff with a grading plan for the road and pad; plaintiff began the grading work and then stopped before completing it; plaintiff failed to construct the road as specified in the plan; plaintiff charged for work that was not performed or was not related to the contract; plaintiff was paid for all work carried out at the property; plaintiff executed several "Waivers and Releases" releasing any claims against defendant. On the basis of these and other facts alleged in the cross-complaint, defendant alleged causes of action for breach of contract, fraud and misrepresentation, slander of title, unlawful business practices, defamation, contribution and indemnification.

The case was tried before the trial court over five days between November 5 and November 12, 2008. On the last day of trial, after close of evidence and argument from counsel, the matter was submitted and the court ruled from the bench. In its ruling, the trial court first considered the issue of whether the oral contract violated Business and Professions Code section 7151 et seq.[2] On this issue, the court concluded that because

---

[1] The complaint also set forth a second cause of action for foreclosure of mechanic's lien. By an order dated November 26, 2007, the trial court sustained defendant's demurrer without leave to amend to the second cause of action because the mechanic's lien and associated lis pendens had been expunged.

[2] Further statutory references are to the Business and Professions Code unless they are cited otherwise. Sections 7151 et seq. govern home improvement contracts. Specifically, section 7159, which provides that if the aggregate contract price of any oral or written "home improvement contract" as defined in Section 7151 exceeds five hundred dollars ($500), then the contract must comply with certain requirements, including, inter alia, that it must be in writing, the writing shall be legible, and "[b]efore any work is

plaintiff was an unsophisticated contractor and defendant was "a sophisticated and undoubtedly successful lawyer with some specialty in real estate," plaintiff's failure to comply with section 7159 did not bar recovery under principles of unjust enrichment espoused in *Asdourian v. Araj* (1985) 38 Cal.3d 276 (*Asdourian*).

The next issue addressed was whether "plaintiff established [by] a preponderance of the evidence that there was an oral contract for what is known as Time and Materials or whether as the defense asserts there was an oral contract for grading only limited to $32,900 together with whatever the reasonable cost of trucking [soil off site] would have been. . . ." Based on its review of the evidence, the trial court concluded that there was no "cap agreement" and that the agreement was "straight Time and Materials." On this point, the court found that the amount paid by defendant to plaintiff was $75,000, not $115,000 as claimed by defendant at trial, leaving $93,000 unpaid in time and materials as claimed by plaintiff.

In addition, the court found that defendant incurred some "legitimate costs," including $8,625 paid to Northern California Excavators to finish off the grading work in preparation for inspection by the permitting authorities, and that there was "some overbilling" by Limon for the backfilling required after plaintiff mistakenly cut too far into the hill while grading the road. On the basis of these findings, the trial court concluded that the amount owed to plaintiff by defendant should be reduced by $20,000 from $93,000 to $73,000. Further, the trial court concluded that the defendant's cross-complaint was without merit, in particular that defendant did not establish defamation and that any clouding of title on the property was temporary and did not result in damages. The court directed the clerk to "enter judgment in accordance with this decision."

Following the trial court's ruling from the bench, neither party requested a statement of decision pursuant to Code of Civil Procedure section 632 nor thereafter

---

started, the contractor shall give the buyer a copy of the contract signed and dated by both the contractor and the buyer." (§ 7159, subds. (b) & (c)(3)(A).)

lodged any oral or written objection to the judgment.[3] The Judgment After Trial by Court filed on November 24, 2008, lists the dates of trial and counsel appearing, notes that witnesses "on the part of both Plaintiff and Defendant were sworn and examined," and states that that after hearing the evidence and arguments of counsel, "the Court ruled from the bench as follows: The plaintiff Jose Alberto Limon, dba Beto Limon's Grading shall have and recover from defendant Harold P. Reiland, aka Harold P. Reiland, Jr., the sum of $73,000, plus costs of suit." Plaintiff filed notice of entry of judgment on December 3, 2008, and defendant filed a timely notice of appeal on January 21, 2009.[4]

DISCUSSION

A. Scope and Standard of Appellate Review

A fundamental tenet of appellate review is that an appealed judgment is presumed to be correct. Under the presumption of correctness, we indulge all intendments and presumptions to support the judgment on matters as to which the record is silent and prejudicial error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

Moreover, of particular importance here is the doctrine of implied findings, which neither party addressed in the briefs. (See *In re Marriage of Arceneaux, supra,* 51 Cal.3d at pp. 1133-1134 [concluding that if a party does not state its objections to the statement of decision as required under section 634, then "that party waives the right to claim on appeal that the statement was deficient . . . and hence the appellate court will imply

---

[3] Code of Civil Procedure section 632 provides in pertinent part that "upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required." (*Ibid.*) However, upon timely request, the court "shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial." (*Ibid.*) Code of Civil Procedure section 634 provides in pertinent part: "When a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court . . . it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue." (*Ibid.*)

[4] Further facts will be recited as necessary for purposes of discussion, *post*.

findings to support the judgment"].) "The doctrine of implied findings requires that in the absence of a statement of decision, an appellate court will presume that the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record. In other words, the necessary findings of ultimate facts will be implied and the only issue on appeal is whether the implied findings are supported by substantial evidence." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267, fn. omitted; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.)

"An applicable corollary to the doctrine of implied findings" is the rule that a trial court's ruling from the bench "is no substitute for a statement of decision. 'In a nonjury trial the appellant preserves the record by requesting and obtaining from the trial court a statement of decision pursuant to Code of Civil Procedure section 632. . . . The statement of decision provides the trial court's reasoning on disputed issues and is our touchstone to determine whether or not the trial court's decision is supported by the facts and the law.' (Citation.)" (*Shaw v. County of Santa Cruz*, *supra*, 170 Cal.App.4th at p. 268 [noting that although a prejudgment ruling "may purport to decide issues in the case, it is merely an informal statement of the views of the trial judge [and] does not constitute findings of fact"].) Although there may be "instances in which a court's oral comments may be valuable in illustrating the trial judge's theory, [] they may never be used to impeach the order or judgment on appeal. (Citation.) This is because a trial court retains inherent authority to change its decision, its findings of fact, or its conclusions of law at any time before entry of judgment and then the judgment supersedes any memorandum or tentative decision or any oral comments from the bench. (Citations.) Thus, a trial judge's pre-judgment oral expressions do not bind the court or restrict its power to later declare final findings of fact and conclusions of law in the judgment. (Citation.) In the absence of a statement of decision, a reviewing court looks only to the judgment to determine error. (Citation.) Absent contrary indication in the final judgment or statement of decision, the appellate court will assume that, during the period before rendition of judgment, the trial court realized any error and corrected it. (Citation.)" (*Shaw v. County of Santa Cruz*, *supra*, 170 Cal.App.4th at p. 268.)

Accordingly, "where the option of requesting a statement of decision under sections 632 and 634 is available, the trial court's less formal comments on the record or in the minutes are insufficient to form the basis of reversible error [because] . . . a trial court's reasons ' "do not in a strict sense constitute part of the record on appeal." ' (Citations.) . . . Where the trial court has issued a tentative or memorandum decision, an appellate court is permitted to examine it to help interpret the lower court's findings or conclusions, and we will not ignore the record, but the function of a memorandum decision on appellate review is very limited and it 'will not be used in determining whether or not the . . . findings . . . are supported by the evidence.' (Citation.)" (*Shaw v. County of Santa Cruz, supra,* 170 Cal.App.4th at pp. 268-269.)

Finally, if the issue on appeal is one of law, not fact, we review the trial court's ruling de novo. (See, e.g., *20th Century Ins. Co. v. Stewart* (1998) 63 Cal.App.4th 1333, 1337.) These general rules governing the scope and standards of appellate review inform our consideration of defendant's attack on the judgment of the trial court.[5]

---

[5] We note plaintiff's contention that the appeal should be dismissed because defendant failed to comply with California Rules of Court, rule 8.130. Defendant designated only part of the testimony received at trial for inclusion in the reporter's transcript. Thus, defendant's appeal is governed by California Rules of Court, rule 8.130(a)(2), which states that when an appellant "designates less than all the testimony, the notice must state the points to be raised on appeal; the appeal is then limited to those points unless, on motion, the reviewing court permits otherwise." (*Id.*) Neither defendant's notice of appeal nor his notice designating the record on appeal lists the points to be raised on appeal. Further, after designating an incomplete transcript, defendant did not seek this court's permission to augment the record or raise appellate issues not identified in his notice of appeal. Thus, defendant waived any contention of error on appeal. (Cal. Rules of Court, rule 8.130(a)(2); see also *McDaniel v. Dowell* (1962) 210 Cal.App.2d 26, 30 [where appellant proceeded by partial transcript, court of appeal would not consider contention that was not listed as one of the points to be raised on appeal]; *Wickham v. Southland Corp.* (1985) 168 Cal.App.3d 49, 52, fn.2 [where appellant designates only a partial record, issues not embraced within the points stated are not subject to review absent a successful motion to proceed on other points].) Nevertheless, in the exercise of our discretion, we will reach the merits of defendant's claims to the extent permitted by the partial record before us and the limited scope of review as described *ante*.

B. Analysis

1. Mutual Assent

Defendant contends that the trial court erred by finding the parties mutually consented to the terms of the oral contract. It is true that "[a]n essential element of any contract is 'consent.' [Citations.] (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811.) The consent must be mutual, meaning that " 'the parties all agree upon the same thing in the same sense.' [Citation.] [¶] . . . If there is no evidence establishing a manifestation of assent to the 'same thing' by both parties, then there is no mutual consent to contract and no contract formation. [Citations.]" (*Ibid.*) Furthermore, "[m]utual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings. [Citation.] Mutual assent is a question of fact. [Citation.]" (*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 141.)

Here, because defendant failed to request a statement of decision, the doctrine of implied findings requires us to infer the trial court made all factual findings necessary to support the judgment, including mutual assent to an oral contract that plaintiff would carry out the grading work on a time and materials basis. (*Fladeboe v. American Isuzu Motors Inc., supra,* 150 Cal.App.4th 42, 58.) Moreover, as illustrated below, even the partial record furnished by defendant provides substantial evidence for the trial court's implied finding of mutual assent.

Plaintiff testified he first met defendant at the property sometime in 2004. Defendant explained he wanted to cut a road to a residence that would be located just below the top of the hill. Plaintiff told defendant he could not give him a price because the road had not yet been surveyed and staked out. In July 2005, about eight months after their first meeting, defendant called plaintiff again to arrange another meeting at the property. This time defendant was accompanied by another person. Defendant introduced the other person to plaintiff as Mr. Loukas and said that Loukas was general contractor on the project. Plaintiff spoke with Loukas and defendant. Plaintiff told

Loukas and defendant that his hourly rates were $105 for each bulldozer and front loader, $75 for each dump truck, and $30 per hour for labor. Loukas replied that plaintiff's rates were reasonable. Defendant raised his shoulders, and plaintiff understood by this that defendant "was okay" with his rates. Plaintiff testified that defendant hired him to do the work at those rates because defendant "gave him the green light to move the equipment in" by asking him "when can you start?" Plaintiff further testified that at the meeting in July 2005 there was no negotiation based on bids submitted by other contractors, nor was there any discussion of a fixed amount for plaintiff's services. In sum, plaintiff's testimony provides substantial evidence that defendant agreed to pay plaintiff on a time and materials basis for grading work on the property. Accordingly, we reject defendant's contention that the trial court erred in finding the parties mutually assented to the terms of the oral contract.

2. Conditional Waivers

During his cross-examination, plaintiff was presented with defendant's exhibits B1, B2 and B3 and confirmed that he had signed those documents and had been paid pursuant to those documents. Defendant's exhibits B1, B2 and B3 are documents entitled "Conditional Waiver & Release Upon Progress Payment." In exhibit B1, plaintiff acknowledges receipt of payment in the amount of $35,000 for "labor, services, equipment, or materials furnished" through to May 26, 2006. In exhibit B2, plaintiff acknowledges receipt of payment in the amount of $5,000 for "labor, services, equipment, or materials furnished" through to November 7, 2005.[6]

Defendant contends that the effect of these waivers was to release him from any additional claims by plaintiff for services furnished within the dates covered by the signed releases. According to defendant, by accepting receipt of the amounts stated in the releases after executing the releases, "plaintiff has given up any and all right to claim any amounts prior to that date."

---

[6] In Exhibit B3, signed on February 24, 2006, plaintiff acknowledges receipt of payment in the amount of $10,000 but there is no entry for the date through which the payment covers "labor, services, equipment, or materials furnished."

The releases signed by plaintiff do not have the legal effect asserted by defendant. A conditional release executed in accordance with Civil Code section 3262 is certainly more than "a glorified receipt" because it waives "mechanic's lien rights, bond rights, and stop notice rights for services rendered and materials provided up to the date stated on the receipt, even if those services and materials were not compensated by the progress payment." (*Tesco Controls, Inc. v. Monterey Mechanical Co.* (2004) 124 Cal.App.4th 780, 797.) However, the release contemplated by section 3262 does not waive a contractor's rights "to pursue compensation for unpaid services and materials under the terms of the contract or as otherwise provided by law or equity," nor does it constitute an accord and satisfaction of the outstanding balance. (*Ibid.*) Defendant's contention therefore fails.

3. Other Contentions

(a)

At trial plaintiff introduced invoices dated June 1 and March 2, 2006, as plaintiff's exhibits 1 and 4 respectively. Plaintiff's invoices listed the equipment used, manpower hours expended and the dollar value of each of those items for each day plaintiff's employees worked at the property. At trial, defendant objected to the admission of plaintiff's exhibit 4 on the basis that it was inadmissible hearsay.[7] On appeal, defendant extends that objection to all invoices, contending that they are inadmissible hearsay

---

[7] The record suggests that the trial court may have overruled defendant's objection and admitted plaintiff's Exhibit No. 4 (invoice dated March 2, 2006) on a non-hearsay basis:

"Defense counsel: The objection is hearsay. There's no exception to this document on a hearsay basis [under] Evidence Code Section 1271 relating to business records. It's not trustworthy because it was not created at the same time as the events that it describes. . . .

Court: What made you think he's offering it as a business record? . . . [¶] Okay. Were you [plaintiff's counsel] offering it as a business record or just as an invoice that he sent to the defendant?

Plaintiff's counsel: I'm offering it as an invoice that [plaintiff] sent so he would be paid.

Court: That's why I overruled the objection, and the ruling stands." In any case, as we conclude *post*, plaintiff's invoices meet the requirements for the business records exception to the hearsay rule.

documents and lack the requisite trustworthiness to be admitted under the business records exception (Evidence Code section 1271).

The trial court's admission of business records will be overturned only if it constitutes an abuse of discretion. (*People v. Jones* (1998) 17 Cal.4th 279, 308.) " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.' " (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.) When such discretionary power is vested in the trial court, its exercise of that discretion "must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]" (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) This means that "when two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citation.]" (*Walker v. Superior Court, supra,* 53 Cal.3d at p. 272.)

Evidence Code section 1271 sets forth the requirements of the business records exception to the hearsay rule. It provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: [¶] (a) The writing was made in the regular course of a business; [¶] (b) The writing was made at or near the time of the act, condition, or event; [¶] (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and [¶] (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

At trial, plaintiff described the manner and method of the accounting system he uses in his grading business. Plaintiff testified he keeps notes for each job he works on. Plaintiff stated that he calls each of his employees once or twice a week and asks them how many hours they worked each day and which projects they worked on. Plaintiff then records that information in his notes for each job. Periodically, he inserts the information gathered in his job notes into a computer program together with the hourly rates for the piece of equipment used by the employee on the job, which yields the total dollar amount

per day billed to the client on the invoice. The invoices are subsequently printed from the information in the computer program.

Defendant claims this method is untrustworthy because the date on the invoice (March 2, 2006) contains entries for work done months before and therefore the invoice is not sufficiently contemporaneous with the acts it records. However, the document is not deficient in that regard because plaintiff's credible testimony demonstrates that the invoice is simply a compilation of information gathered over time, which information (plaintiff's job notes) was gathered contemporaneously with the acts (number of hours spent by each employee, each day, on each job) recorded therein. In sum, assuming the trial court admitted the invoices under the business records exception to the hearsay rule, such admission does not amount to an abuse of discretion.

(b)

Defendant contends the trial court erred by failing to allow bifurcation of the cross-complaint as to Tom Loukos and Loukos Construction. We disagree.

On August 25, 2008, defendant filed ex parte an application to amend the cross-complaint to name Tom Loukos and Loukos Construction, based on testimony by plaintiff at his deposition that Tom Loukas told plaintiff, "I'll pay you if Reiland (cross-complainant) doesn't." In his ex-parte application, defendant asserted this information meant Loukos "has become an indispensible party to the cross-complaint." Also, defendant asked the court in his ex-parte application to bifurcate "the issue of the cross-complaint damages as they are unripe" because the grading of the road has not yet been inspected and approved by county or the San Ramon Valley Fire District. According to a minute order dated October 15, 2008, the trial court issued a tentative ruling on defendant's application and entertained oral argument on the matter. The record does not contain a transcript of the oral argument. The minute order dated October 15, 2008, indicates that the motion to bifurcate is denied and states that "the court will consider severing the cross-complaint against x-deft Loukos only if he is served by the date of trial." The record does not indicate whether Loukos was served by the date of trial. On the basis of this record, therefore, defendant has failed to show either error or prejudice.

(c)

Defendant contends the judgment should be corrected to exclude his father, Harold P. Reiland. The judgment requires no correction on this point.

The second amended complaint names as defendant Harold P. Reiland. At trial, defendant admitted that in response to a form interrogatory he admitted he had in the past used the names Harold P. Reiland and Hal Reiland. Also, defendant testified that his full name is Harold P. Reiland, Jr. Based on this testimony, plaintiff moved to amend the complaint to add "aka Harold P. Reiland Junior," and the court granted the amendment. On redirect examination, defendant stated it was unfair that the suit included his father Harold P. Reiland. The trial court responded that "I'm definitely not allowing [defendant's] father to be added to the lawsuit. . . . [¶] . . . [¶] . . . It's not an added defendant. It's just also known as." In sum, the judgment does not include defendant's father and therefore requires no correction on this point.

(d)

Defendant disputes the factual basis for the trial court's finding that the *Asdourian* exception to section 7159 applies to plaintiff's claim.[8] Defendant also asserts that the trial court did not fully consider his 32 affirmative defenses, and failed to find in his favor on the affirmative defenses of negligence and breach of contract as well as the claims set

---

[8] As pertinent here, *Asdourian* holds that because a contract made in violation of section 7159 is not "immoral in character" or "inherently inequitable," it is not *malum in se* and therefore not void: Rather, such a contract is "*malum prohibitum*, and hence only *voidable* depending on the factual context and the public policies involved." (38 Cal. 3d at p. 293.) On this point, the court concluded that the home improvement contracts at issue should be enforced despite violating section 7159 because the facts indicated defendant "is a real estate investor, not an unsophisticated homeowner or tenant," plaintiff and defendant were friends so "the failure to comply with the strict statutory formalities is, perhaps, understandable," and "defendants accepted the benefits of the oral agreement[s]" and would be unjustly enriched if they did not compensate plaintiff. (*Ibid.*)

forth in his cross-complaint [9] Additionally, defendant asserts error in the trial court's award of damages and its damages calculation.

Our review of these remaining contentions is governed by the doctrine of implied findings, which means that we must infer all findings necessary to support the judgment where such findings are supported by substantial evidence. (*Fladeboe v. American Isuzu Motors Inc., supra,* 150 Cal.App.4th at p. 58.)

In this regard, we infer that the trial court found the facts here sufficiently analogous to those in *Asdourian* to warrant enforcement of the oral contract despite plaintiff's non-compliance with section 7159. The trial court's finding is supported by substantial evidence. As in *Asdourian, supra,* the facts indicate defendant was "not an unsophisticated homeowner or tenant," but rather was a experienced corporate real estate attorney overseeing a project to develop a residence on a hillside lot that required grading a road in the hill for access to a building pad cut near the top of the hill. (*Asdourian, supra,* 38 Cal. 3d at p. 293.) Despite his standing as an attorney with knowledge of contract law, defendant did not insist on a written contract for such a complicated project. Rather, because defendant wanted the job finished as quickly as possible, he gave plaintiff the "green light" to move his men and machinery onto the property and begin work right away on the basis of an oral agreement only. Accordingly, we will not disturb the trial court's finding that the facts here warrant enforcement of the oral contract despite plaintiff's non-compliance with section 7159.[10]

---

[9] To affirmatively show that error occurred, an "appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] . . . [Citations.] . . . [C]onclusory claims of error will fail." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) In other words, it is simply not sufficient for an "appellant to point to the error and rest there." (*Santina v. General Petroleum Corp.* (1940) 41 Cal.App.2d 74, 77.) Accordingly, we reject defendant's baseless assertion that the trial court "had made up its mind to reject the cross-complaint and affirmative defenses" prior to entertaining closing argument.

[10] Even if the issue of whether the trial court properly applied *Asdourian* to the facts of the case is seen as a mixed question of fact and law requiring de novo review (see, e.g., *CUNA Mutual Life Ins. Co. v. Los Angeles County Metropolitan Transportation Authority* (2003) 108 Cal.App.4th 382, 391 [de novo review applies to a mixed question

Similarly, substantial record evidence supports the trial court's findings in regard to its damages calculation and the judgment award of $73,000 in favor of plaintiff. According to plaintiff's testimony and the invoices presented at trial, plaintiff billed defendant a total of approximately $150,000 for time and materials on work carried out at the property between August and November 2005. Further, plaintiff billed defendant the additional sum of $17,730 for work at the property carried out between May 9 and May 17, 2006, after defendant asked plaintiff to return to the property to change the grade on one portion of the roadway. Plaintiff received a total of $75,000 in payments from defendant for the work shown on those invoices. This evidence indicates defendant owed plaintiff a balance of approximately $93,000 for work at the property. The trial court, however, awarded plaintiff judgment in the amount of $73,000, not $93,000. Substantial evidence supports an offset of this magnitude. For example, plaintiff charged approximately $1,250 to replace and compact the dirt removed in the overcut referenced by the trial court. Also, defendant testified that he paid Northern California Excavation $8,625 to finalize the grading prior to inspection; that he spent $6,000 on straw mats, plastic and clean up to rectify an erosion problem caused by plaintiff; and that he spent $2,100 to rent an excavator for 7-days and hired an operator at $38 per hour to carry out some of the work he thought plaintiff should have done. This record evidence provides support for the trial court's reduction of plaintiff's damages award in the amount of $20,000. In sum, substantial evidence supports the trial court's award of damages and defendant has failed to show that reversal is merited on this point.

---

of fact and law if it requires the appellate court "to exercise judgment about the values that animate legal principles"], we would affirm the trial court on this record.

DISPOSITION

The judgment is affirmed. Defendant shall bear costs on appeal.[11]

_____
Jenkins, J.

We concur:

_____
McGuiness, P. J.

_____
Pollak, J.

[11] Respondent's request that sanctions be imposed against appellant for purportedly filing a frivolous appeal and engaging in dilatory tactics on appeal is hereby denied.